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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/973,534	10/09/2001	Heinz Focke	20605.006US	7818
22870	7590	12/16/2003	EXAMINER	
TECHNOPROP COLTON, L.L.C. P O BOX 567685 ATLANTA, GA 311567685			MACK, COREY D	
			ART UNIT	PAPER NUMBER
			2855	

DATE MAILED: 12/16/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	09/973,534	FOCKE ET AL.
	Examiner Corey D. Mack	Art Unit 2855

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 29 April 2003.

2a) This action is **FINAL**.      2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-29 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 1-29 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. §§ 119 and 120

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some \* c) None of:

- Certified copies of the priority documents have been received.
- Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
- Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

13) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

a) The translation of the foreign language provisional application has been received.

14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

#### Attachment(s)

1) Notice of References Cited (PTO-892)

2) Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) Information Disclosure Statement(s) (PTO-1449) Paper No(s) 3, 6.

4) Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_

5) Notice of Informal Patent Application (PTO-152)

6) Other: \_\_\_\_\_

## DETAILED ACTION

### *Claim Rejections - 35 USC § 112*

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claim 9 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 9 recites the limitation "the load cell" in line 2. It is unclear from the claim what "load cell" is being referred to. Therefore, the claim is rendered indefinite.

### *Claim Rejections - 35 USC § 103*

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1, 2, 6, 8, 10, 11, 14, 18, 21, 22, 23, 26, 27 and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Focke (US 4,984,409) in view of Fenlon (US 6,202,476).

- A. With respect to Claims 1 and 18, Focke discloses a method of testing packs 10 of formable packaging material, in particular of cuboid-shaped cigarette packs having at least one wrapper of cardboard, characterized in that the pack is impinged with a pressure and the resulting deformed packs are separated (column 4, line 50 – column 5, line 9). However, Focke does not explicitly disclose applying a defined pressure and measuring

the deformations. Fenlon discloses a package testing device 4 and method comprising applying a defined pressure to the package 2 and measuring the deformation of the package in order to accurately measure the output of the package testing (column 3, lines 34-67). Since Focke and Fenlon are both from the same field of endeavor, the purpose of disclosed by Fenlon would have been recognized in the pertinent art of Focke. Therefore, at the time the invention was made, it would have been obvious to a person of ordinary skill in the art to include in Focke, applying a defined pressure to package and measuring the results.

B. With respect to Claim 2, Focke discloses the claimed invention, except he does not explicitly disclose comparing the measured deformations to default measurements of the same packs. However, Fenlon discloses comparing the measured deformation value P with default deformation measurements of the same type of package being tested in order to detect a problem with the package (column 4, lines 1-27). Therefore, at the time the invention was made, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to include in Focke, comparing measured deformations with default measurements in order to detect a problem with a package.

C. With respect to Claim 6, Focke discloses the claimed invention, including transferring a force to the pack surface (column 4, lines 55-68).

D. With respect to Claim 8, Focke discloses the claimed invention, except he does not disclose that deformation of the package is measured by a position sensor. However, Fenlon discloses that the deformation of the package 2 under test is measured by movement of the pressure-exerting means 18 and the distance traveled by the pressure-exerting means is measured by a position sensor 14. Therefore, at the time the invention

was made, it would have been obvious to a person of ordinary skill in the art to include in Focke, using a position sensor connected to a pressure-exerting means to measure deformation of a package under test.

E. With respect to Claims 10, 21, 22, 23, 26 and 27, Focke, discloses the claimed invention, except he does not explicitly disclose two opposing pressure plates, wherein a pressure-exerting means is movable against the pack to transfer a force across the entire large surface of the package. Fenlon discloses a package-testing device comprising two opposed pressure plates 6, 16, wherein pressure-exerting means 16 is movable against the test package 2 to transfer a force across the entire large surface surface of a thin cardboard cigarette pack having at least one wrapper. Therefore, at the time the invention was made, it would have been obvious to a person of ordinary skill in the art to include in Focke, using two opposed pressure plates in order to exert pressure on the test package.

F. With respect to Claims 11 and 29, Focke, discloses the claimed invention, except he does not disclose a pressure plate mounted on a carrier that can be moved up and down. Fenlon discloses a pressure plate 16 that is mounted on a carrier 20 that can be moved up and down by, in particular a pressure strut 12, that can be displaced by means of a uniformly driven gear mechanism 11 that is connected to a position sensor 14. Therefore, at the time the invention was made, it would have been obvious to a person of ordinary skill in the art to include in Focke, mounting the pressure plate on a carrier that can be uniformly driven.

G. With respect to Claim 14, Focke, discloses the claimed invention, except he does not disclose a distance measuring device attached to the displaceable pressure-exerting means. Fenlon discloses a distance measuring device 14 attached to the displaceable

pressure-exerting means 16. Therefore, at the time the invention was made, it would have been obvious to a person of ordinary skill in the art to include in Focke, a distance measuring device attached to the pressure-exerting means in order to accurately measure the distance traveled by the pressure-exerting means.

5. Claims 3, 4, 5, 6, 7, 9, 12, 13, 15, 16, 17, 19, 20, 24, 25 and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Focke (US 4,984,409) in view of Fenlon (US 6,202,476) as applied to claims 1, 2, 6, 8, 10, 11, 14, 18, 21, 22, 23, 26, 27 and 29 above, and further in view of Grandejus, et al. (US 5,209,124).

A. With respect to Claims 3, 7 and 24, Focke, as modified by Fenlon, discloses the claimed invention, except they do not explicitly disclose measuring the resistance of the package as counterforce by means of a pressure gauge. Grandejus, et al. disclose an apparatus and method for determining the filling capacity of tobacco and the hardness of cigarettes wherein tobacco R under test is compressed (deformed) under uniform movement of a pressure-exerting means 8 and the resistance of the pack as counterforce is measured by pressure gauge or force-measurement device 12. While Grandejus, et al. test cut tobacco, as opposed to packaged tobacco, the same general principles apply. Further, Grandejus, et al. is from a related art area as Focke and Fenlon and seeks to solve a similar problem, i.e. testing the filling capacity and resistance of tobacco/cigarettes. Therefore, at the time the invention was made, it would have been obvious to a person of ordinary skill in the art to include in Focke, as modified by Fenlon, the teachings of Grandejus, et al. for the purpose of accurately measuring the resistance of tobacco/cigarettes.

B. With respect to Claims 4, 5, 6, 9, 19, 20 and 25, Focke, as modified by Fenlon, discloses the claimed invention, except they do not explicitly disclose plotting a curve representing force versus distance traveled by the pressure-exerting means or that the force is represented as a derivative or second derivative. Grandenjus, et al. discloses measuring the resistance 12 and distance traveled 42 by the pressure-exerting means 8 and inputting each measurement into a computer 44 (column 8, lines 6-48). While Grandenjus, et al. do not explicitly teach plotting force a curve or as a derivative, it would be well-within the knowledge of one of ordinary skill in the art to use the computer to manipulate the inputted values to produce a force versus distance curve and to represent force as a derivative or second derivative in order to understand how an applied force impacts a product under test. (See MPEP § 2144.03). Therefore, at the time the invention was made, it would have been obvious to a person of ordinary skill in the art to include in Focke, as modified by Fenlon, manipulating measured force values to produce a force versus distance curve and represent force as a derivative in order to understand how force affects a product under test.

C. With respect to Claims 12 and 28, Focke, as modified by Fenlon, discloses the claimed invention, except they do not explicitly disclose that a bearing plate is connected to a load cell. Grandenjus, et al. discloses a bearing plate or pressure plate 8 that is connected to a force measuring device or load cell 12 in order to measure the force acting on a product under test. Therefore, at the time the invention was made, it would have been obvious to a person of ordinary skill in the art to include in Focke, as modified by Fenlon, a load cell connected to a bearing plate in order to measure the force acting on a product under test.

D. With respect to Claim 13, Focke, as modified by Fenlon, discloses the claimed invention, except they do not explicitly disclose an upper traverse and a lower traverse connected to one another on support columns. Grandejus, et al. disclose a supporting framework with an upper traverse 6 and a lower traverse 4 that are connected to one another on supporting columns 2, with a pressure strut 11 being displaceably mounted on the supporting columns and a load cell 11 positioned on the pressure strut. While the load cell is not positioned on the lower traverse, it would have been obvious to one having ordinary skill in the art at the time the invention was made to place the force measuring device above or below the product that the force is being applied, since it has been held that rearranging parts of an invention involves only routine skill in the art. *In re Japikse*, 86 USPQ 70. Therefore, at the time the invention was made, it would have been obvious to a person of ordinary skill in the art to include in Focke, as modified by Fenlon, placing the load cell under the product under test in order to measure the force applied to the product.

E. With respect to Claims 15, 16 and 17, Focke, as modified by Fenlon and Grandejus, et al., discloses the claimed invention, except they do not explicitly disclose the incorporation of the generic features outlined by applicant. However, these features are all well-known design choices and would have been within the knowledge of one of ordinary skill in the art at the time the invention was made. (See MPEP § 2144.03). Therefore, at the time the invention was made, it would have been obvious to a person of ordinary skill in the art to include in Focke, as modified by Fenlon and Grandejus, et al., the design choices claimed by applicant for the purpose of yielding a fully operable package testing and assembly device design to meet a particular use.

Art Unit: 2855

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Corey D. Mack whose telephone number is (703) 305-3424. The examiner can normally be reached on M-F, 8:30-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Edward Lefkowitz can be reached on (703) 305-4816. The fax phone number for the organization where this application or proceeding is assigned is (703) 305-3431.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 306-3431.

CDM

Corey D. Mack, Esq.  
Patent Examiner  
Art Unit 285

  
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December 11, 2003